

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
HOT SPRINGS DIVISION

JAMES LEONARD TONEY

PLAINTIFF

v.

Civil No. 6:18-cv-6039

SHERRIFF MIKE CASH, *et al.*

DEFENDANTS

ORDER

Before the Court is the Report and Recommendation filed August 9, 2018, by the Honorable Barry A. Bryant, United States Magistrate Judge for the Western District of Arkansas. (ECF No. 12). Judge Bryant conducted a preservice screening of Plaintiff James Leonard Toney's complaint and now recommends that the Court dismiss certain claims pursuant to 28 U.S.C. § 1915A. Plaintiff has filed objections to the Report and Recommendation. (ECF No. 13). The Court finds the matter ripe for consideration.

On May 3, 2018, Plaintiff filed this action pursuant to 42 U.S.C. § 1983, alleging that Defendants violated his constitutional rights while he was incarcerated in the Hot Spring County Detention Center. Specifically, Plaintiff asserts individual and official capacity claims related to denial of access to the courts, based on the alleged denial of access to a law library; conditions of confinement, based on lack of tuberculosis lights; and retaliation.

On August 13, 2018, Judge Bryant issued the instant Report and Recommendation. Judge Bryant recommends that the Court dismiss certain of Plaintiff's claims for failure to state a claim. Specifically, Judge Bryant recommends that the Court dismiss Plaintiff's official capacity claims, as well as his individual capacity claims related to the lack of a law library and tuberculosis lights. Judge Bryant also recommended that the Court dismiss Plaintiff's individual capacity claims against Separate Defendants Tollison, Lingo, Maher, Fain, and Burnett for failure to allege any facts against them.

Judge Bryant found that Plaintiff had stated a plausible retaliation claim against Separate Defendant Cash in his individual capacity, and recommended that that claim remain for service and further consideration.

On August 27, 2018, Plaintiff filed objections to the Report and Recommendation. Plaintiff's filing is styled as a notice responding to the Report and Recommendation and asks the Court to deem the filing as objections. However, the objections invoke Federal Rule of Civil Procedure 41 and ask the Court to dismiss without prejudice Plaintiff's claims of conditions of confinement and denial of access to the courts. The objections also ask that the Court allow his retaliation claim to remain.

The Court finds that, to the extent that Plaintiff has filed objections to the Report and Recommendation, they do not oppose Judge Bryant's recommendations.¹ In fact, the objections appear to seek the same result recommended by Judge Bryant: dismissal without prejudice of Plaintiff's claims related to denial of access to the courts and conditions of confinement. Therefore, the Court adopts the Report and Recommendation (ECF No. 12) *in toto*. Accordingly, Plaintiff's official capacity claims are hereby **DISMISSED WITHOUT PREJUDICE** as to all Defendants. Additionally, Plaintiff's individual capacity claims are **DISMISSED WITHOUT PREJUDICE** as to all Defendants, except for Plaintiff's retaliation claim against Separate Defendant Cash in his individual capacity. That claim shall remain for service and further consideration. Service will be addressed in a separate order.

IT IS SO ORDERED, this 4th day of September, 2018.

/s/ Susan O. Hickey
Susan O. Hickey
United States District Judge

¹ To the extent that Plaintiff's objections (ECF No. 13) constitute a separate motion, it is hereby **DENIED AS MOOT** for the reasons stated in this order.